

**ORDINANCE NO. 3532**

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, ADOPTING A ZONING MORATORIUM ON THE APPLICATION OF ECDC 20.10.070(C)(3) RELATING TO THE IMPOSITION OF SPECIAL HEIGHT LIMITS TO PROTECT VIEWS, SETTING A PUBLIC HEARING THEREON WITHIN SIXTY DAYS, ESTABLISHING AN EXPIRATION DATE, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

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WHEREAS, the decision of the Snohomish County Superior Court in *Bauer v. City of Edmonds* interprets certain provisions of City ordinance in a manner different than they have been historically and consistently applied by the City staff and Architectural Design Board, and

WHEREAS, said decision controls the application considered in the Land Use Petition Act case but does not have controlling precedential value with respect to other applications which may be filed with the City, and

WHEREAS, the City Council is awaiting the recommendations of its Planning Board regarding changes to the Comprehensive Plan and zoning code which may address any or all of these issues, and

WHEREAS, the court in *Bauer* interpreted the term “view” as utilized in ECDC 20.10.070(C)(3) to include a view of the sky, and

WHEREAS, the City staff and Architectural Design Board have consistently interpreted the word “view” to exclude “shadowing,” that is, the architectural concept that a structure may block sunlight and limit the sky, and

WHEREAS, the City is under the obligation in its architectural design process to meet the following standard:

Clearly, however, aesthetic standards are an appropriate *component* of land use governance. Whenever a community adopts such standards they can and must be drafted to give clear guidance to all parties concerned. Applicants must have an understandable statement of what is expected from new construction. Design professionals need to know in advance what standards will be acceptable in a given community. It is unreasonable to expect applicants to pay for repetitive revisions of plans in an effort to comply with unarticulated, unpublished “statements” ...It is equally unreasonable, and a deprivation of due process, to expect or allow a design review board ... to create standards on an *ad hoc* basis, during the design review process.

*Anderson v. Issaquah*, 71 Wash. App. 64, 82-83 (Div. I, 1992)

WHEREAS, the provisions of ECDC 20.10.070(C)(3) do not contain definitions of the word “view,” “substantial blockage,” nor “surrounding properties,” and such terms are utilized in the sections regarding a special height limit should substantial view blockage occur, and

WHEREAS, the City Council deems it appropriate to impose a moratorium on the application of ECDC 20.10.070(C)(3) until such time as the terms have been defined or the Council deems it to be in the public interest to repeal said provision, thereby assuring compliance with *Anderson v. Issaquah*, NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Pursuant to RCW 36.63.020; 36.70.795, and 36.70A.390 a moratorium is hereby enacted on the application of ECDC 20.10.070(C)(3) relating to the imposition of special height limitations to protect views.

Section 2. This ordinance is limited to six months duration and shall expire on its own terms unless extended following public hearing, by act of the City Council.

Section 3. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:

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MAYOR GARY HAAKENSEN

ATTEST/AUTHENTICATED:

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CITY CLERK, SANDRA S. CHASE

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY 

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W. SCOTT SNYDER

FILED WITH THE CITY CLERK:	01/14/2005
PASSED BY THE CITY COUNCIL:	01/18/2005
PUBLISHED:	01/23/2005
EFFECTIVE DATE:	01/28/2005
ORDINANCE NO. <u>3532</u>	

## **SUMMARY OF ORDINANCE NO. 3532**

of the City of Edmonds, Washington

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On the 18<sup>th</sup> day of January, 2005, the City Council of the City of Edmonds, passed Ordinance No. 3532. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, ADOPTING A ZONING MORATORIUM ON THE APPLICATION OF ECDC 20.10.070(C)(3) RELATING TO THE IMPOSITION OF SPECIAL HEIGHT LIMITS TO PROTECT VIEWS, SETTING A PUBLIC HEARING THEREON WITHIN SIXTY DAYS, ESTABLISHING AN EXPIRATION DATE, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

The full text of this Ordinance will be mailed upon request.

DATED this 19<sup>th</sup> day of January, 2005.

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CITY CLERK, SANDRA S. CHASE